

the request for review, and the accompanying documents and materials, to the United States Trustee by overnight courier, for delivery the next business day. The trustee may request that specific documents in the possession of the United States Trustee be transmitted to the Director for inclusion in the record.

(g) The United States Trustee shall have 15 calendar days from the date of the trustee's request for review to submit to the Director a written response regarding the matters raised in the trustee's request for review. The United States Trustee shall provide a copy of this response to the trustee. Both copies shall be sent by overnight courier, for delivery the next business day.

(h) The Director may seek additional information from any party in the manner and to the extent the Director deems appropriate.

(i) Unless the trustee and the United States Trustee agree to a longer period of time, the Director shall issue a written decision no later than 30 calendar days from the receipt of the United States Trustee's response to the trustee's request for review. That decision shall determine whether the United States Trustee's decision is supported by the record and the action is an appropriate exercise of the United States Trustee's discretion, and shall adopt, modify or reject the United States Trustee's decision to suspend or terminate the assignment of future cases to the trustee. The Director's decision shall constitute final agency action.

(j) In reaching a determination, the Director may specify a person to act as a reviewing official. The reviewing official shall not be a person who was involved in the United States Trustee's decision or a Program employee who is located within the region of the United States Trustee who made the decision. The reviewing official's duties shall be specified by the Director on a case by case basis, and may include reviewing the record, obtaining additional information from the participants, providing the Director with written recommendations, or such other duties as the Director shall prescribe in a particular case.

(k) This rule does not authorize a trustee to seek review of any decision to increase the size of the chapter 7 panel or to appoint additional standing trustees in the district or region.

(l) A trustee who files a request for review shall bear his or her own costs and expenses, including counsel fees.

[62 FR 51750, Oct. 2, 1997]

§ 58.15 Qualifications for approval as a nonprofit budget and credit counseling agency.

(a) *Definition of agency.* As used in this section the term "agency" means nonprofit budget and credit counseling agency.

(b) *Qualifications.* To be included on the list of approved nonprofit budget and credit counseling agencies under 11 U.S.C. 111 an agency shall meet the qualifications set forth in paragraphs (d) through (i) of this section. An agency shall continuously meet these qualifications in order to remain included on this list when the list is updated thereafter.

(c) *Preemption.* Nothing contained in these regulations or the related application, appendices or instructions is intended to preempt any applicable law or regulation governing the conduct or operations of an agency.

(d) *Structure and organization.* A nonprofit budget and credit counseling agency must:

(1) Be organized and operated as a nonprofit entity;

(2) Be in compliance with all applicable laws and regulations of the United States and each state, commonwealth, district, or territory of the United States in which the agency conducts credit counseling services;

(3) Have an independent board of directors the majority of which:

(i) Are not employed by such agency; and

(ii) Will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(4) Ensure that no member of the board of directors or trustees, officer, manager, employee, counselor, or agent is a United States Trustee Program employee, a panel or standing trustee, a Federal judge, a Federal

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court employee, a certified public accountant that performs audits of the agency's trust accounts, or a person with a financial or familial connection to the United States Trustee Program.

(5) Avoid any conduct or transactions that generate or create the appearance of generating a private benefit for any individual or group related or connected to the Agency.

(e) *Fees.* If a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee; the agency's criteria for providing services without a fee or at a reduced rate must be provided to the United States Trustee. In addition, an agency shall:

(1) Have sufficient computer capabilities or secure access to issue certificates of completion of credit counseling in conformance with the directives established by the EOUST;

(2) Not withhold a certificate of counseling completion because of a client's inability to pay;

(3) Advise the client of the fee schedule before services are provided and inform the client that services are available for free or at a reduced rate based on a client's ability to pay;

(4) Issue a certificate to any client who completes credit counseling and a budget analysis, regardless of whether a client agrees to participate in a debt management plan and without regard to the client's ability to pay;

(5) Issue the certificate within one business day to a client after completion of the required counseling or upon the earlier of the following:

(i) A request by a client for the issuance of a certificate; or

(ii) The completion or termination of a counseling session, which may include the administration of a debt management plan;

(6) Not charge a separate fee for the issuance of a certificate of counseling unless the agency has clearly disclosed such fee before the initial credit counseling session;

(7) Issue a certificate to each spouse whether counseling was provided individually or in a joint session;

(8) Maintain adequate records to issue replacement certificates and to verify the authenticity of certificates filed by bankruptcy debtors;

(9) Provide full disclosures to a client, including funding sources, counselor qualifications, possible impact on credit reports, the cost of services to be paid by the client and how such costs will be paid, before services are rendered and regardless of whether the client enters into a debt management plan.

(f) *Standards for counseling and counselors.* Agencies and credit counselors shall not, unless otherwise authorized by law, provide legal advice on any matter. Agencies and credit counselors shall:

(1) Provide adequate briefings, budget analysis, and credit counseling services to clients lasting an average of 60 to 90 minutes in length that include an outline of available counseling opportunities to resolve a client's credit problems, an analysis of the client's current financial condition, discussion of the factors that caused such financial condition, and assistance in developing a plan to respond to the client's problems without incurring negative amortization of debt;

(2) Provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in sub-paragraph (1) of this paragraph. A counselor shall be deemed to have adequate training and experience to provide credit counseling and budget analysis if the counselor is accredited or certified by a recognized independent organization, or has successfully completed a course of study acceptable to the United States Trustee and has worked a minimum of six months in a related area, including personal finance, budgeting, and debt management. The United States Trustee Program does not endorse any specific course or certification program;

(3) Demonstrate adequate experience and background in providing credit counseling, which means, at a minimum, that an agency must:

(i) Have experience in providing credit counseling for the previous two years. Alternatively, if an agency fails to meet the two-year requirement, the

agency must currently employ in each office location that serves clients at least one office supervisor with experience and background in providing credit counseling for no less than two of the five years preceding the relevant application date, including only experience obtained on or after January 1, 2003; and

(ii) If an agency offers telephone or Internet credit counseling services, the agency must, in addition to all other requirements, demonstrate sufficient experience and proficiency in designing and providing such services over the telephone and/or Internet, including verification procedures to identify the person receiving the counseling services and to ensure that the counseling services are properly completed.

(g) *Activity report.* Upon application for annual approval, the agency must furnish an estimate of the information requested in Appendix E, “*Activity Report for Approved Agencies*,” of the application projected to the end of either the probationary period or annual period. Within thirty (30) days after the completion of either the probationary period or annual period, the agency must furnish an amended Appendix E which includes the actual information.

(h) *Agency declarations and acknowledgments.* (1) The agency’s president, chairman, trustee, or other authorized official is required to declare, by signing the application, that such individual is authorized to complete the application on behalf of the agency; that such individual has read and knows the contents of the application and all enclosures and attachments submitted; and that such individual affirms under penalty of perjury that all of the representations and statements contained therein are true and correct to the best of such individual’s knowledge, information, and belief;

(2) By executing and submitting the “*Application for Approval as a Nonprofit Budget and Credit Counseling Agency*,” the agency acknowledges and agrees to abide by the prohibitions, limitations, and obligations set forth in Appendix A, “*Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Nonprofit Budget and Credit Counseling Agency*,” of the appli-

cation which include, but are not limited to, the following:

(i) Making all records relating to the agency’s compliance with 11 U.S.C. 111 available to the United States Trustee and EOUST upon request and cooperating with the United States Trustee and EOUST for any scheduled or unscheduled on-site visits and customer service audits;

(ii) Cooperating with the United States Trustee and the EOUST in timely responding to any questions or inquiries concerning the agency’s operations and services;

(iii) Not excluding a creditor from a debt management plan because the creditor declines to make a “fair share” contribution to the agency;

(iv) Agreeing that any forms, agreements, contracts, or other materials provided to a client will not limit the client’s right to seek damages against an agency as provided for in 11 U.S.C. 111(g)(2);

(v) Conducting a state and Federal criminal background check at least every five years for each person providing credit counseling services, if such criminal background check is authorized under state law, and not employing as a counselor anyone who has been convicted of any felony, or a crime involving fraud, dishonesty, or false statements, unless the United States Trustee determines, upon review and in his or her discretion, circumstances warrant a waiver of this employment requirement. The state criminal background check shall be conducted in the state where the counselor resides. If a criminal background check is not authorized by state law, the agency shall obtain a sworn statement from each counselor, at least every five years, which attests to whether the counselor has been convicted of any felony or a crime involving fraud, dishonesty, or false statements;

(vi) Referring clients for counseling services only to agencies that are approved by the United States Trustee;

(vii) Complying with the EOUST’s directions on approved advertising, which is located in Appendix A to the application;

(viii) Not disclosing or providing to a credit reporting agency information

concerning whether a client has received or sought instruction concerning credit counseling or personal financial management from an agency, and not selling information about a client to any third party without the client's written permission, regardless of whether the counseling is presented in a classroom, on the telephone, on the Internet, or any other venue;

(3) Upon request of the United States Trustee or EOUST, an agency shall submit a completed and signed tax waiver, which authorizes the United States Trustee or EOUST to seek confidential information regarding the agency from the Internal Revenue Service.

(i) *Agency financial requirements and surety bonds.* (1) If an agency offers debt management plans, the agency must have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan, and provide for the safekeeping and payment of client funds, including an annual audit of the trust accounts in accordance with generally accepted auditing standards by an independent certified public accountant, and appropriate employee bonding; which includes:

(i) Depositing all client funds into a trust account insured by a Federal institution with respect to each client. The records creating the trust account must demonstrate that the trust account was established in a fiduciary capacity and must comply with the Federal institution's regulations so that each client's funds are insured up to the maximum amount allowable by the Federal institution;

(ii) Keeping and maintaining books, accounts, and records to provide a clear and readily understandable record of all business conducted by the agency; and

(iii) Obtaining a surety bond payable to the United States in an amount which is the lesser of:

(A) Two percent of the agency's prior year disbursements made from trust accounts; or

(B) Equal to the average daily balance maintained in all trust accounts for the six months prior to submission of the application. At a minimum, the bond must be \$5,000;

(2) An agency may receive an offset or credit for the surety bond amount as follows:

(i) The agency has obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, in compliance with the requirements of the state, commonwealth, district, or territory ("state") in which the agency seeks approval from the United States Trustee;

(ii) The surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit provides protection for the clients of the agency;

(iii) The surety bond, or similar cash, securities, insurance, or letter of credit, must be written in favor of the state or the appropriate state agency; and

(iv) The offset or credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state;

(3) An agency must have adequate employee bonding or fidelity insurance. The amount of such bonding or fidelity shall be 50 percent of the surety bond amount calculated prior to any offset/credit that the agency may receive for state bonds. At a minimum, the employee bond or fidelity insurance must be \$5,000;

(4) An agency may receive an offset or credit in the employee bond/fidelity insurance amount as follows:

(i) The agency has obtained an employee bond or fidelity insurance in compliance with the requirements of a state, commonwealth, district, or territory in which the agency seeks approval from the United States Trustee;

(ii) The deductible cannot exceed a reasonable amount considering the financial resources of the agency; and

(iii) The offset/credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state;

(5) If the agency has contracted with another entity ("service provider") to administer any part of its debt management plan, the service provider is approved by the United States Trustee as a nonprofit budget and credit counseling agency, or the service provider is specifically covered under the agency's surety bond or has a surety bond in a

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sufficient amount to provide for the safekeeping of the agency's client funds, and the service provider agrees in writing to allow the United States Trustee or EOUST to audit the trust accounts maintained by the service provider and to review the service provider's internal controls and administrative procedures.

[71 FR 38078, July 5, 2006]

§ 58.16 Procedures for inclusion on the approved list.

(a) As used in this section the term "agency" means nonprofit budget and credit counseling agency.

(b) Each nonprofit budget and credit counseling agency seeking to be included on the list of approved agencies must complete in its entirety the application form EOUST-CC1, "*Application for Approval as a Nonprofit Budget and Credit Counseling Agency*" (application), including all appendices, and submit it at the address indicated on the application.

(c) The application must be executed under penalty of perjury in a manner specified in 28 U.S.C. 1746.

(d) An application may not be accepted by the EOUST unless it is complete and has been signed by an agency representative who is authorized to sign on behalf of the agency. An application that is incomplete or has been altered, amended, or changed in any respect from the application at the United States Trustee Program's Web site may not be accepted by the EOUST. Such an application will be denied, and no further action will be taken on the request for inclusion on the approved list until a new application is submitted that corrects the defects.

(e) The EOUST will not accept an application submitted by an agency on behalf of another individual or group of individuals. Each agency that desires to be included on the approved list must submit its own application.

(f) Each agency must submit a new application 45 to 60 days before expiration of its six month probationary period or annual period to be considered for annual approval. After the application is completed and signed, the originals must be mailed to the EOUST, Credit Counseling Application Processing, at the address indicated on the

application. The EOUST will not accept a photocopy or facsimile of the application.

(g) An agency whose name appears on the list incorrectly may submit a written request that the name be corrected. An agency whose name appears on the list may submit a written request that its name be removed from the list.

(h) By submitting an application, the agency expressly consents to the release and disclosure of the agency's name on the approved list and the publication of the agency's contact information.

(i) Obligation to Update Information:

(1) The agency has a continuing duty to promptly notify the EOUST of any circumstances that would materially alter or change a response to any section of the application, including but not limited to, changes in the location of primary or satellite business office(s); the principal contact person; name or fictitious name under which the agency does business; management, including the board of directors; a merger or consolidation with another entity; and the banks or financial institutions used by the agency;

(2) The agency shall request approval by amendment to its application, and prior to occurrence of the following changes:

(i) Cancellation or change in amount of the surety bond or employee fidelity bond or insurance;

(ii) The engagement of a service provider to provide counseling services to administer debt management plans, or to otherwise control or account for client funds;

(iii) An increase in the fees, contributions, or payments received from clients for counseling services or a change in the agency's policy for the reduction or waiver of fees;

(iv) Expansion into additional judicial districts or withdrawal from judicial districts where the agency is approved; and

(v) Method of delivery or type of counseling services;

(3) The agency must include with any amendment to its application, a newly executed "certification and signature;"

(4) The agency will notify the EOUST immediately upon the occurrence of any of the below noted events: